vidual. So, although proceedings have been or may be begun by the attorney-general on behalf of the state to restrain a public nuisance, an individual who has sustained special damage may also obtain relief.[12]

Another phase of this subject has been before the courts in the so-called "liquor cases."[13] It was contended that statutes which made the selling of spirituous liquor indictable as a public nuisance and gave to every citizen, irrespective of special damage, the right to have such nuisance enjoined, were unconstitutional. As a general rule, it is true, equity will not intervene to prevent the commission of a crime as such,[14] but it will not refuse to protect public or property rights merely because the acts complained of happen to be criminal.[15] Nor can it be urged that these statutes deprive the defendant of the right to trial by jury, for the Constitution does not confer the right in cases where it did not exist previous to the adoption of the Constitution.[16] Moreover, since the granting of an injunction is not punishment within the meaning of the Constitution,[17] there is no question of double jeopardy involved.[18] A private citizen cannot abate a public nuisance, for the destruction of property is a trespass even though it is being used for an illegal purpose,[19] but the "liquor cases" are sound in holding that the state may empower individuals to enjoin a public nuisance, as this in fact merely involves a matter of procedure.[20]

THE EXTENT OF THE CLAIM NECESSARY FOR ADVERSE POSSESSION. — At common law a disseisee, in addition to his right of entry which might be tolled by descent cast, discontinuance, or other cause, could regain his land by a writ of entry or other form of real action.[1] It was against these forms of action that the first statutes of limitation were directed.[2] Since mere possession without actual disseisin would never toll the entry[3] and force the true owner to resort to an action, these old statutes could put title only in disseisors. The statute of James,[4] on which the later statutes are based, merely barred the right of entry after twenty years. On its face, therefore, this statute would put title in any one against whom entry could have been made. But the judges for many years required a disseisin to set this statute running,[5] probably because only disseisors had acquired rights by the former statutes. This was nothing less than judicial legislation and was

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12 Cook *v.* Mayor, etc., of Bath, L. R. 6 Eq. 177.

13 Littleton *v.* Fritz, 65 Ia. 488.

14 Cope *v.* District Fair Ass., 99 Ill. 489.

15 Allis Chalmers Co. *v.* Reliable Lodge, 111 Fed. 264, where strikers were enjoined, although their acts constituted a statutory crime. But see 9 HARV. L. REV. 521.

16 People *ex rel. v.* Mayor of Alton, 233 Ill. 542; People *ex rel. v.* Flaherty, 119 N. Y. App. Div. 462.

17 State *ex rel. v.* Roby, 142 Ind. 169, 189.

18 *Ex parte* Allison, 99 Tex. 455. *Cf.* State *ex rel. v.* Vankirk, 27 Ind. 121 (proceeding for surety of the peace), and Gardner *v.* The People, 20 Ill. 430 (sustaining ordinances making punishable an act which is also punishable under state laws).

19 State *v.* Stark, 63 Kan. 529; 15 HARV. L. REV. 415.

20 Littleton *v.* Fritz, *supra.*

1 Co. Lit. 239 a.

2 St. 32 Hen. VIII, c. 2. See Co. Lit. 115 a.

3 Doe d. Souter *v.* Hull, 2 D. & R. 38.

4 St. 21 Jac. I., c. 4.

5 Reading *v.* Rawsterne, 2 Ld. Ray. 829.

severely criticised as such.[6] And while later courts have not adhered strictly to that requirement, yet they have felt its influence, and a study of the modern law of adverse possession needs reference to the old law of disseisin.

To a disseisin only a claim of freehold was necessary.[7] As to the claim now necessary under the statute and the rights resulting from the adverse possession of one claiming less than a fee, there is no satisfactory authority. In a recent case where the defendant claimed under a void lease, it was held that by virtue of his possession for the statutory period he could not be ousted until the end of the term which the lease had attempted to give. *Warren Co.* v. *Lamkin*, 46 So. 497 (Miss.). The court did not consider the extent of the claim, but followed a former *sub silentio* decision,[8] and overlooked an earlier opposing dictum.[9] The defendant could not have been a disseisor, for a termor is possessed, not of the land, but of his term;[10] and a disseissin involves an ouster from the freehold.[11] And it has been held in the only other American cases on the point to be found, that possession with a claim under a void lease, as in the principal case, will not satisfy the statute.[12] Again, although where a life estate is claimed there may be a disseissin,[13] possession under such a claim is not adverse.[14] But a claim of a life interest with a belief that the remainder is in another who is not the true owner is sufficient.[15] Such a claim does dispute the fee of the owner, and those decisions can be reconciled with Justice Story's often cited dictum that the claim of a fee is necessary for adverse possession.[16]

This technical rule seems to be generally accepted, and, indeed, it has much in policy to commend it. But the purpose of the statute, to bar stale claims and so quiet title, might be better satisfied if the claim of the termor or life tenant were held to be sufficiently adverse. If it were so decided, the question would arise as to the extent of the estate thereby acquired. Estates of less duration than a fee may be gained under the statute when an adverse possessor claims against the tenant of a life estate, since the remainderman has no right of entry until the termination of the particular estate.[17] Now a disseisor always acquired a fee regardless of the extent of his claim;[18] but such a rule gives a wrongdoer more than he claimed, and operates harshly against a purchaser of the reversion. It would be sounder and more equitable to give the possessor an estate commensurate with his claim, with the remainder over to the true owner. Despite the authority, most of which is dicta, much can be said therefore in support of the principal decision as more closely adhering to the spirit of the statute of limitations.

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[6] See Ballantine, Statute of Limitations, 19, 21.
[7] Co. Lit. 153 b, 181 a.
[8] Brown *v.* Supervisors, 54 Miss. 230.
[9] See Magee *v.* Magee, 37 Miss. 138, 152.
[10] Co. Lit. 330 b.
[11] Co. Lit. 153 b, 181 a.
[12] Sanders *v.* Riedinger, 19 N. Y. Misc. 289. This follows an earlier decision based on absence of a disseisin. Bedell *v.* Shaw, 59 N. Y. 46.
[13] It was said that entry under a mistaken belief of title in a life estate is not disseisin. See Com. Dig., Seisin, f. 3.
[14] Dewey *v.* McLain, 7 Kan. 126.
[15] Board *v.* Board, L. R. 9 Q. B. 48. See 18 HARV. L. REV. 381; 19 *ibid.* 59.
[16] See Ricard *v.* Williams, 7 Wheat. (U. S.) 59, 107.
[17] Orthwein *v.* Thomas, 13 N. E. 564.
[18] Co. Lit. 296; 180 b.